

Kathleen Sullivan (SBN 242261)
kathleensullivan@quinnemanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

Sean S. Pak (SBN 219032)
seanpak@quinnemanuel.com
Amy H. Candido (SBN 237829)
amycandido@quinnemanuel.com
John M. Neukom (SBN 275887)
johnneukom@quinnemanuel.com.
QUINN EMANUEL URQUHART &
SULLIVAN LLP
50 California Street, 22nd Floor
San Francisco, CA 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

Mark Tung (SBN 245782)
marktung@quinnemanuel.com
QUINN EMANUEL URQUHART &
SULLIVAN LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100

Attorneys for Plaintiff Cisco Systems, Inc.

Steven Cherny (*admitted pro hac vice*)
steven.cherny@kirkland.com
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Adam R. Alper (SBN 196834)
adam.alper@kirkland.com
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500

Michael W. De Vries (SBN 211001)
michael.devries@kirkland.com
KIRKLAND & ELLIS LLP
333 South Hope Street
Los Angeles, California 90071
Telephone: (213) 680-8400
Facsimile: (213) 680-8500

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF

**DECLARATION OF SARA E. JENKINS
IN SUPPORT OF CISCO'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL CONFIDENTIAL
INFORMATION IN CISCO'S
OPPOSITION TO ARISTA'S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Judge: Hon. Beth Labson Freeman

DECLARATION OF SARA E. JENKINS

I, Sara E. Jenkins, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted to practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Plaintiff Cisco Systems, Inc. ("Cisco"). I have personal knowledge of the matters set forth in this Declaration, and if called as a witness I would testify competently to those matters.

2. I make this declaration in support of Cisco's Administrative Motion to File Under Seal Confidential Information in connection with Cisco's Opposition to Arista's Motion for Partial Summary Judgment ("Opposition."). I make this declaration in accordance with Civil Local Rule 79-5(d)(A) on behalf of Cisco to confirm that the information contained in the documents referenced in the Sealing Motion should be sealed.

3. As an Opposition to a Motion for Partial Summary Judgment, Cisco's Opposition is considered to be dispositive. In this context, materials may be sealed so long as the party seeking sealing provides "compelling reasons supported by specific factual findings that outweigh the general history of access and the public policies favoring disclosure." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-1179 (9th Cir.2006). Compelling reasons for sealing court files generally exist when such "'court files might have become a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." *Id.* (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978)). Under this standard, compelling reasons have been found to seal documents such as those containing confidential source code (*Apple, Inc. v. Samsung Electronics Co., Ltd.*, Case No. 11-cv-1846, D.I. 2190 at 3 (Dec. 10, 2012); documents related to the "internal procedures for addressing cardholder fraud notifications" of a bank, *id.* at *2-3 (*Cowan v. GE Capital Retail Bank*, No. 13-cv-03935-BLF, 2015 WL 1324848, at *1-3 (N.D. Cal. Mar. 24, 2015)); documents containing "information about [a party's] business performance, structure, and finances that could be used to

gain unfair business advantage against them,” *Schwartz v. Cook*, No. 5:15-cv-03347-BLF, 2016 WL 1301186, at *2 (N.D. Cal. Apr. 4, 2016); documents containing “highly sensitive information regarding [a party’s] product architecture and development,” *Delphix Corp. v. Actifio, Inc.*, No. 13-cv-04613-BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug. 20, 2014); documents in the form of “emails containing information about [a party’s] business practices, recruitment efforts, and discussions regarding potential partnerships with other product manufacturers,” *Koninklijke Philips N.V. v. Elec-Tech International Co., Ltd.*, No. 14-cv-02737-BLF, 2015 WL 581574, at *1-2 (N.D. Cal. Dec. 10, 2015); and documents containing “information regarding non-public recruitment efforts and business practices” of a party, *id.* at *2-3.

4. Pursuant to Civil L.R. 79-5(d)(A), compelling reasons exist to seal the documents that contain Cisco confidential information and are identified in the Sealing Motion and below. Cisco also moves to seal documents designated as confidential by Arista and third parties and expects that they will file a supporting declaration pursuant to Civil L.R. 79-5(e)(1).

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Cisco’s Opposition to Arista’s Motion for Partial Summary Judgment (“Opposition”)	Highlighted Portions	Arista
Exhibits 1-4; 36-37; 51-53 to the Declaration of John M. Neukom in Support of Cisco’s Opposition to Arista’s Motion for Partial Summary Judgment (“Neukom Declaration”)	Entire	Arista
Exhibit 46 to the Neukom Declaration	Highlighted Portions	Arista

Document	Portions to Be Filed Under Seal	Party With Claim of Confidentiality
Exhibit 6 to the Neukom Declaration	Highlighted Portions	Cisco
Exhibit 9 to the Neukom Declaration	Entire	Cisco
Exhibit 1 to the Declaration of Kevin Almeroth in Support of Cisco's Opposition to Arista's Motion for Partial Summary Judgment ("Almeroth Declaration")	Highlighted Portions	Arista, Cisco, Hewlett Packard
Exhibit 2 to the Almeroth Declaration	Highlighted Portions	Arista, Cisco, Dell
Exhibit 3 to the Almeroth Declaration	Entire	Arista, Cisco
Exhibit 1 to the Declaration of Kevin Jeffay in Support of Cisco's Opposition to Arista's Motion for Partial Summary Judgment ("Jeffay Declaration")	Entire	Arista

5. Exhibits 1-4; 36-37; 46; 51-53 to the Neukom Declaration contain information previously designated as confidential by Arista. Cisco files this declaration with respect to these exhibits to provide Arista with the opportunity to file a supporting declaration pursuant to Civil L.R. 79-5(e)(1).

6. Exhibit 6 to the Neukom Declaration is an exhibit to an interrogatory that was designated by Cisco in this matter as "Highly Confidential – Attorneys' Eyes Only" under the Protective Order. The highlighted portions of this exhibit includes Cisco's confidential source code. As such, there are compelling reasons to seal the highlighted portions. *See Agency Solutions.Com, LLC v. TriZetto Group, Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal. 2011) (source code is "undoubtedly a trade secret" within the sealing context.) Additionally, Cisco files this

02099-00004/8147331.1

3

DECLARATION OF SARA E. JENKINS IN SUPPORT OF
ADMINISTRATIVE MOTION TO FILE UNDER SEAL

1 declaration to allow Arista the opportunity to file a supporting declaration pursuant to Civil L.R.
2 79-5(e)(1).

3 **7.** Exhibit 9 to the Neukom Declaration is a document produced by Cisco in this
4 matter designated as “Highly Confidential – Attorneys’ Eyes Only” under the Protective Order.
5 This exhibit discusses confidential information about the development and security of Cisco’s
6 products. As such, compelling reasons exist to seal the highlighted portions of this document. *See*
7 *Delphix Corp. v. Actifio, Inc.*, No. 13–cv–04613–BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug.
8 20, 2014) (“highly sensitive information regarding [a party’s] product architecture and
9 development” are sealable under the heightened standard for dispositive motions.)

10 **8.** Exhibit 1 to the Almeroth Declaration includes information that was designated as
11 confidential by Arista and Cisco as well as third-party Hewlett Packard under the Protective Order
12 in this matter. Through this declaration, Cisco supports the sealing of paragraphs 83-86 of this
13 exhibit. Paragraphs 83-86 contain Cisco’s confidential source code. As such, there are
14 compelling reasons to seal this paragraph. *See Agency Solutions.Com, LLC v. TriZetto Group,*
15 *Inc.*, 819 F. Supp. 2d 1001, 1017 (E.D. Cal. 2011) (source code is “undoubtedly a trade secret”
16 within the sealing context.) Additionally, Cisco files this declaration to allow Arista and Hewlett
17 Packard the opportunity to file a supporting declaration pursuant to Civil L.R. 79-5(e)(1).

18 **9.** Exhibit 2 to the Almeroth Declaration includes information designated as
19 confidential by Arista and Cisco as well as third-party Dell. Through this declaration, Cisco
20 supports the sealing of the highlighted portions of paragraphs 164-166. Paragraphs 164-166
21 contain confidential information about the technology and architecture of Cisco’s products. As
22 such, there are compelling reasons to seal the highlighted portions of these paragraphs. *See*
23 *Delphix Corp. v. Actifio, Inc.*, No. 13–cv–04613–BLF, 2014 WL 4145520, at *2 (N.D. Cal. Aug.
24 20, 2014) (“highly sensitive information regarding [a party’s] product architecture and
25 development” are sealable under the heightened standard for dispositive motions.) Additionally,

SIGNATURE ATTESTATION

Pursuant to Civ. L.R. 5-1(i)(3), the undersigned hereby attests under penalty of perjury that concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of registered ECF User Sara E. Jenkins.

Dated: July 14, 2016

/s/ John M. Neukom
John M. Neukom